DEPARTMENT OF STATE REVENUE

11-20160676R.ODR

Final Order Denying Refund: 11-20160676R
Motor Vehicle Rental Tax
For Tax Years 2014, 2015 & 2016

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision or Final Order Denying Refund.

HOLDING

Indiana Retailer was not entitled to refund of collection fees because it failed to show that it timely responded to Department proposed assessments and demand notices.

ISSUE

I. Motor Vehicle Rental Tax - Refund of Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Sq. Amoco. Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); P/S, Inc. v. Ind. Dep't of State Revenue, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer protests the partial denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer is an Indiana retailer that is primarily engaged in the business of automotive customization, including window tinting, anti-theft alarm system, remote starting system, and audio/visual system installation. In October 2014, Taxpayer filed a form BT-1 to open accounts for the collection of retail sales tax and motor vehicle rental tax. However, Taxpayer never filed any motor vehicle rental tax returns. In July 2015, the Indiana Department of Revenue ("Department") issued Taxpayer proposed assessments for unpaid sales tax and motor vehicle rental tax. Taxpayer did not respond to the proposed assessments and demand notices, and the Department issued tax warrants on the outstanding liabilities.

As part of its collection activities, the Department employed a third-party collection agency to collect amounts which had been determined that Taxpayer owed in Indiana sales and motor vehicle rental tax. After that amount was levied from Taxpayer's bank account by the collection agency, Taxpayer filed a claim for refund. The Department refunded a portion of that amount minus an amount for unpaid sales tax and collection fees. Taxpayer protests the denial of refund of the collection fees, but does not protest the amount retained for sales tax. A telephonic administrative hearing was held and this Final Order Denying Refund results. Further facts will be supplied as necessary.

I. Motor Vehicle Rental Tax - Refund of Collection Fees.

DISCUSSION

Taxpayer protests the Department's denial of a portion of its claim for refund of collection fees for tax years 2014, 2015 and 2016 (the "Tax Years"). It must be noted that all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Sq. Amoco. Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable

interpretation of [the] statute even over an equally reasonable interpretation by another party." Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

The Department determined that Taxpayer had not remitted Indiana sales tax and motor vehicle rental excise tax for the Tax Years. Due to the fact that Taxpayer's motor vehicle rental tax account was still open but no returns had been filed, the Department based its calculations of motor vehicle rental tax due for the Tax Years on the best information available ("BIA") to the Department. The Department sent "proposed assessments" for the Tax Years in July 2015, and subsequently sent Taxpayer "demand notices." Eventually, after receiving no response to those notices, the Department issued tax warrants for the outstanding obligations and the matter was turned over to a third-party collection agency.

After receiving notice from the third-party collection agency, Taxpayer contacted the Department in March 2016 and submitted MVR-1 forms and a BC-100 form in April 2016, and the Department closed Taxpayer's registration for motor vehicle rental tax effective November 2014. However, the third-party collection agency subsequently levied Taxpayer's bank account for the amount of the liabilities, including base tax, penalty, interest, collection fees. Taxpayer submitted a Claim for Refund in May 2016. Ultimately, the Department determined that Taxpayer did not owe the motor vehicle rental tax at issue and issued a refund of the motor vehicle rental base tax that had been assessed, but retained an amount for the collection fees and outstanding sales tax liabilities.

As an initial matter, the Department was authorized in issuing the proposed assessments to taxpayer based upon the best information available. IC § 6-8.1-5-1 provides in relevant part:

> (b) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax **on the basis of the best information available to the department**. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.
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> (c) The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. **The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.**
> (**Emphasis added**).

IC § 6-8.1-5-1(d) also provides that a taxpayer has sixty days from the date the notice of proposed assessment is mailed to pay the assessment or file a written protest. In July 2015, the Department began issuing notices of "proposed assessment" for the Tax Years based upon Taxpayer's failure to close its registration or file returns for motor vehicle rental tax with the Department, and for unpaid sales tax. Taxpayer has not provided documentation to show that it responded to the notice of "proposed assessment" within the sixty day statutory time period.

Because Taxpayer did not respond to the "proposed assessment" in a timely manner, the Department then issued "demand notice" to Taxpayer in accordance with Indiana statute. IC § 6-8.1-8-2 states in relevant part:

> (a) Except as provided in IC 6-8.1-5-3 and sections 16 and 17 of this chapter, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:
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> (1) **That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.**
> (2) The statutory authority of the department for the issuance of a tax warrant.
> (3) The earliest date on which a tax warrant may be filed and recorded.
> (4) The statutory authority for the department to levy against a person's property that is held by a financial institution.
> (5) The remedies available to the taxpayer to prevent the filing and recording of the judgment . . . .
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> (b) **If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees** established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10[percent]) of the unpaid tax is added to the total amount due. (**Emphasis added**).

As provided by IC § 6-8.1-8-4:

> (a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. **The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees**. (**Emphasis added**).

In this case, the proposed assessment advanced through the legally required procedures, and there is a presumption that Taxpayer received the notices. See P/S, Inc. v. Indiana Dep't of State Revenue, 853 N.E.2d 1051, 1054 (Ind. Tax Ct. 2006) ("When an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received.") The Department was authorized to issue the demand notices and tax warrants, employ a collection agency to collect the debt related to the tax warrants, and to include a collection fee in the total liability. Taxpayer did not provide any documentation showing that it responded to the demand notices within the then ten day statutory period.

Taxpayer asserts that the motor vehicle rental tax account was opened in error and that Taxpayer never engaged in vehicle rental services. However, Taxpayer also stated that, in 2014, it had plans to be a dealer for moving truck rentals, but ultimately did not go through with the arrangement. Taxpayer has not provided any evidence that the motor vehicle rental tax account was opened by the Department in error, and the BT-1 electronically filed in October 2014 shows that Taxpayer requested that the motor vehicle rental tax account be opened along with its sales tax account. It is Taxpayer's responsibility to fill out its forms correctly, and there is no indication that Taxpayer did not voluntarily elect to register for a motor vehicle rental tax account.

Taxpayer did not make efforts to close the motor vehicle rental tax account until after the BIA assessments, demand notices, and tax warrants had been issued. Taxpayer's documentation shows that it did not contact the Department to close its motor vehicle rental tax account until March 2016, which was well after the tax warrants had already been issued and third-party collection efforts had been undertaken. The refund denial letter is correct in stating that once a liability advances to the warrant stage, collection fees are nonrefundable.

The documentation provided by Taxpayer does not sufficiently show that Taxpayer timely responded to the Department's notices, and does not show that Taxpayer contacted the Department in a timely manner to avoid collection actions. Taxpayer has also not shown that registration for the motor vehicle rental tax account was an error by the Department. Due to the missed statutory deadlines by Taxpayer, the Department incurred the collection fees from the third-party collection agency which it would not have incurred with a timely response and explanation from Taxpayer. Therefore, the Department is correct to retain an amount equal to the collection fees it incurred.

FINDING

Taxpayer's protest is respectfully denied.

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